

## **Election Emergencies: Hurricane Helene and the 2024 Election**

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### “Biblical Devastation”

On September 26, 2024, Hurricane Helene, a Category 4 hurricane, made landfall in the Big Bend region of Florida and swept through the Southeast United States. The estimated death toll is currently at least 213 people with many others still unaccounted for, making Helene “one of the deadliest hurricanes in the United States, at least since the emergence of modern weather forecasting.” Windspeeds hit 140 miles per hour, with storm surges along areas of the Florida coast exceeding fifteen feet. Approximately five-and-a-half million customers lost power during the disaster, with almost 700,000 still waiting to have service restored. States of emergency were declared in 61 out of Florida’s 67 counties, as well as throughout the entire states of Georgia and North Carolina.

The storm inundated and, in some cases, wiped out numerous communities. Ninety percent of the homes in Keaton Beach, Florida, have been “washed away.” Much of Cedar Key, Florida was similarly flooded, with many residences destroyed. Areas of Asheville, North Carolina were almost completely underwater, suffering what one resident termed a “mini-apocalypse.” The village of Chimney Rock suffered almost “total devastation,” its central business district “100% destroyed.” Several highways have been rendered unusable by floods, collapsed trees, and mudslides, while some bridges simply collapsed. Roads throughout Western North Carolina remain closed to all traffic except for emergency vehicles. Many areas have been left without cell phone service or safe drinking water. Moody’s has estimated the storm caused between \$15-26 billion in property damage.

This devastation occurred less than six weeks before the November 2024 election, creating tremendous new obstacles for both election officials and voters which threaten to impede turnout and potentially even impact the election’s outcome. Most basically, election officials themselves are among Helene’s victims. States’ chief election officers, state boards of election, and other administrators must ensure that additional workers are recruited to staff election offices, early voting sites, and/or polling locations where county and local officials have been dislocated or injured and are unable to work. Election officials in many states have already begun the process of identifying alternate sites for in-person voting in jurisdictions where early voting and Election Day polling locations have been destroyed or rendered inaccessible.

Additionally, election officials throughout the southeastern states must ensure voting machines, tabulators, printed ballots, and other voting equipment remain undamaged from the storm. In jurisdictions where logic and accuracy testing for electronic equipment has already been conducted, governors or election officials should exercise emergency authority—where it is available—to require such tests to be conducted again in any locations where floodwater, heavy wind, or other such hazards may have affected them.

Election officials must also ensure they have enough absentee ballots to meet increased demand as a result of the hurricane. Florida officials are likely already well-situated in this regard since between [a quarter](#) and [a third](#) of votes cast in the state's federal elections are usually vote-by-mail ballots. In Georgia and North Carolina, in contrast, [fewer than ten percent](#) of [votes](#) are typically cast absentee. Even during the [COVID-19 pandemic in 2020](#) where absentee and mail ballots spiked to [43.1% of votes nationwide](#), usage in those states remained at 26.1% and 17.6%, respectively. Given the magnitude of Helene's destruction, election officials in towns and counties where power and telecommunications remain spotty, roads are inaccessible, and many homes and buildings are destroyed should be prepared to have a majority of voters request absentee ballots. Even absentee ballots may not be a panacea, however, since [mail service is currently suspended](#) or delayed in some of the [hardest-hit areas](#).

### General State-of-Emergency Authority

As I have explored in prior work ([here](#) and [here](#)), states vary dramatically in terms of the extent to which their laws empower election officials to adequately respond to election emergencies such as hurricanes. The Governors of [Florida](#) and [Georgia](#) may suspend "any regulatory statute prescribing the procedures for conduct of state business" if "strict compliance" would impede "necessary action in coping with" a declared emergency. Fla. Stat. 252.36(6)(a). Ga. Code § 38-3-51(d)(1). [North Carolina](#) law, in contrast, appears to permit the Governor—with the concurrence of the Council of State—to "waive" only state regulations and local ordinances, rather than statutes, during such emergencies.

Florida Governor Ron DeSantis [issued a broad executive order](#), E.O. 24-212 (Oct. 3, 2024), addressing many of Helene's impacts across Florida's eleven "Affected Counties." Due to its widespread physical destruction, he authorized Supervisors of Election to designate new early voting locations (including locations that ordinarily would not meet statutory requirements) and dropbox sites ("Secure Ballot Intake Stations"). Supervisors may similarly designate new Election Day polling locations, consolidate them, or move the polling place for a precinct that lacks a safe, accessible site to a nearby precinct.

Because the hurricane destroyed thousands of homes and dislocated so many Floridians, the order gives Supervisors within the Affected Counties authority to allow their voters to request by phone to have their vote-by-mail ballots sent to an address other than the address of record at which they're registered. State law typically requires voters to submit such requests in writing. Supervisors also may transmit vote-by-mail ballots via forwardable mail, even though state law generally requires ballots to be non-forwardable. Governor DeSantis addressed poll worker shortages in the Affected Counties by suspending certain training requirements for poll workers, waiving county residency requirements so that any Florida voter may serve as a poll worker in the Affected Counties, and providing administrative leave to state employees to receive training and serve as poll workers on Election Day there.

Any supervisor who uses this emergency authority must notify both the Secretary of State and the general public through "print and broadcast media, social media, website postings," and printed signs at polling locations. Governor DeSantis also delegated to the Secretary of State his authority to suspend both state laws within the Department of State's "purview" as well as any of

that department's regulations which would hinder "necessary action in coping with the emergency."

### Election Emergency Laws

Many states also have more specific election emergency statutes for mitigating the impact of natural disasters and other such crises on the electoral process. These laws differ substantially from state to state, though some basic provisions dealing with narrow, discrete issues—such as allowing the use of paper ballots when voting machines are inoperable or relocating polling places that have become inaccessible—are ubiquitous.

Because Florida's general state-of-emergency statute gives the Governor broad authority to suspend state laws, its election emergency law focuses primarily on authorizing the Governor to "suspend or delay" elections due to natural disasters. An affected election must be held within ten days "or as soon thereafter as is practicable," and the Division of Elections must promulgate an "elections emergency contingency plan" for holding such elections. During an emergency, election officials may also provide vote-by-mail ballots to voters even after in-person early voting has begun, modify the rules for sending absentee ballots to overseas voters, move a precinct's polling place outside the precinct's bounds, and submit election returns late to the Department of State; while governing bodies may purchase voting equipment without requiring sealed bids. In addition, the Secretary of State also may adopt emergency rules valid for up to ninety days.

Georgia law allows the State Board of Elections to promulgate emergency rules only "in circumstances of imminent peril to public health, safety, or welfare," but requires notice to various executive and legislative officials. It also contains a few other noteworthy provisions that other states should consider adopting: election officials may use "buses and other readily movable facilities" as polling locations in emergencies, and the state's voter registration database is expressly required to have a "disaster recovery system." Georgia law further specifies that during emergencies, dropboxes may be located outside of election officials' offices or advance voting locations, rather than inside them.

North Carolina similarly delegates authority to the State Board of Elections to "exercise emergency powers to conduct an election" that has been disrupted by a natural disaster or "[e]xtremely inclement weather." Unlike Georgia's law, North Carolina's statute expressly contemplates such emergency measures may contradict the state election code, though the Board must "avoid unnecessary conflict." As in Florida, the State Board is also expressly empowered to adopt "special procedures or requirements" when necessary to "facilitate absentee voting" by uniformed and overseas voters. The election emergency law goes on to set limits on the Board's emergency powers; the Board may not change local legislative districts, send absentee ballots to voters who did not request them, or switch to an all-mail election. State law further specifies that, even without action by the Board, a voter who cannot show proper identification due to a natural disaster may complete an affidavit to that effect and cast a provisional ballot.

Hurricane Helene underscores the importance of states adopting election emergency statutes well in advance of a crisis. Such statutes can reduce or eliminate uncertainty as to the scope of election officials' authority to respond to a crisis. They allow the legislature to

determine—outside the context of a particular election and without the pressure of an ongoing disaster—the various steps which officials are authorized to take to alleviate unexpected barriers to voting while preserving the overall security of the process. Such laws can reduce the need for litigation, where changes to election laws are made by generalist judges, ostensibly as a matter of constitutional law, in rushed, harried proceedings, typically brought by partisans, and often without full appreciation of the potential implications an injunction may have for election administration.

Moreover, such statutes give legislatures the opportunity to adopt election emergency “[redlines](#)”—steps that election officials may not take, even in response to a disaster. For example, [North Carolina prohibits](#) election officials from automatically sending absentee ballots to people from whom they have not received requests, even during a declared emergency (though the state board can require election officials to instead mail absentee ballot *request forms* to everyone in the voter registration database). Taking certain measures off the table—such as Internet voting or the use of blank write-in emergency ballots by domestic voters—can help both legislators and members of the public feel more comfortable in delegating emergency authority to election officials.

### Potential Litigation

Given the high stakes of a presidential election, candidates, political parties, and private nonprofit organizations are reasonably likely to bring lawsuits challenging various aspects of states’ election codes on the grounds election officials allegedly have not done enough to mitigate Helene’s impacts. Such suits are likely to fall into several categories. Most immediately, litigation is likely to challenge voter registration deadlines. The deadline for registering to vote in the November election in [Florida](#) and [Georgia](#) is Monday, October 7, 2024. In North Carolina, applications submitted by mail must be postmarked by [October 11](#), though people may register to vote [in person at early voting locations](#) throughout the early voting period.

Judicial precedents concerning extensions of voter registration deadlines due to election emergencies somewhat conflict. For example, Hurricane Matthew hit Florida on October 7, 2016. In [Florida Democratic Party v. Scott](#), Judge Mark Walker of the U.S. District Court for the Northern District of Florida entered a dispositive preliminary injunction extending the deadline for the 2016 election by a week, from October 11 to October 18. He held that enforcing the statutory deadline under such circumstances would unconstitutionally burden the right to vote. A Georgia federal court, in contrast, declined to extend Georgia’s October 11 deadline except in Chatham County, where it ordered an extension because election offices there had been closed from October 6 through October 12. *See Bethea v. Deal*, 2016 U.S. Dist. LEXIS 144861, at \*10-11 (S.D. Ga. Oct. 19, 2016).

During the following congressional election, U.S. District Judge Robert Hinkle of the Northern District of Florida followed the Georgia court’s more nuanced approach. Florida’s voter registration deadline that cycle was October 9, 2018. Several areas of the state were under mandatory evacuation orders because Hurricane Michael was scheduled to make landfall in the state the following day. The Secretary of State authorized supervisors of election whose offices were closed on October 9 due to the hurricane to extend the deadline for in-person applications until the next full day their offices were open. The deadlines for applications submitted by mail or

online, however, remained unchanged. Judge Hinkle refused to further extend the registration deadlines holding that, so long as supervisors took advantage of the authority the Secretary granted them, the Secretary's order was constitutionally sufficient. See [Fla. Democratic Party v. Detzner](#), 2018 U.S. Dist. LEXIS 174528 (N.D. Fla. Oct. 10, 2018). Under this opinion, since most voters had an effectively indefinite amount of time to register, as well as multiple potential methods of doing so, they are constitutionally entitled to additional time only when their county election offices are closed on the deadline, in order to prevent such closures from effectively ending voter registration early. Courts that adopt this more cautious approach to deadline extensions generally emphasize that allowing voters to submit voter registration forms late can easily overwhelm election officials who are already struggling to ensure early voting and Election Day voting proceed as smoothly as possible despite the disaster.

A [South Carolina county court, in contrast, has followed Judge Walker's approach](#), extending the deadline for in-person voter registration for the current election by ten days, from October 4, 2024, to October 14. This was consistent with the court's approach from 2018, when [it ordered](#) a similar ten-day extension as a result of Hurricane Florence.

During COVID-19, in contrast, courts in these states were generally unwilling to extend the deadline for registering to vote in the general election, at least partly because voters had been aware of the pandemic well in advance of the deadline. See [Democracy N.C. v. N.C. State Board of Elections](#), 476 F. Supp. 3d 158, 212 (M.D.N.C. 2020); see also [Namphy v. DeSantis](#), 493 F. Supp. 3d 1130 (N.D. Fla. 2020); [S.C. Progressive Network Education Fund v. Andino](#), 493 F. Supp. 3d 460 (D.S.C. 2020).

Similar as-applied litigation is likely to arise in the weeks to come challenging the requirements for requesting absentee or vote-by-mail ballots, seeking suspension or modification of voter identification laws, and attempting to extend early voting periods and the deadline for returning absentee ballots. When courts suspend certain measures intended to promote election integrity, minimize fraud or irregularity, and bolster public confidence in the electoral process, they should exercise their broad equitable discretion to impose alternate measures better tailored to the exigencies of the emergency as part of their relief, rather than simply enjoining the challenged provision with no alternate or replacement protection.

One potential barrier to such suits is the so-called [Purcell Principle](#), taken from the Supreme Court's ruling in [Purcell v. Gonzalez](#), 549 U.S. 1 (2007) (per curiam). [Professor Rick Hasen has explained](#) how *Purcell* has evolved into an almost completely inflexible prohibition on federal courts enjoining election-related legal provisions, rules, and procedures either during a voting period or shortly before it starts. During the 2020 pandemic, in [Republican National Committee v. Democratic National Committee](#), 140 S. Ct. 1205 (2020) (per curiam), the Supreme Court clarified that the principle applies even to court-ordered changes imposed as the result of an election emergency. [As I have argued elsewhere](#), whatever the general merits of *Purcell*, it makes no sense to apply the principle to litigation arising from a natural disaster or other emergency when unexpected departures from the ordinary rules governing the election are likely inevitable. Nevertheless, *Purcell* is likely to act as a check on the ability of federal courts to respond to Hurricane Helene. Of course, *Purcell* does not apply of its own force to litigation in state courts,

and [recent scholarship suggests](#) many state courts are generally declining to apply the principle with full force.

### Extending Presidential Elections

In light of Hurricane Helena's devastation throughout much of the southeastern United States, combined with Hurricane Milton's likely impending impact on Florida, some people may consider the possibility of postponing or extending the election by providing additional time for voting or even delaying Election Day. [Federal law requires](#) presidential elections to be held on Election Day, which it sets as the Tuesday following "[the first Monday in November](#)." In the event of an "[extraordinary and catastrophic](#)" force majeure event, however, a state may "modif[y] [its] period of voting." This statutory authorization for additional days of voting is primarily intended to apply to last-minute disasters that unexpectedly strike on, or immediately before, Election Day, rather than a crisis that hits over a month earlier that has substantial, longer-lasting consequences.

New York is presently the only state in the nation that expressly allows additional time for voting based on abnormally low turnout as the result of a natural disaster or other crisis. [N.Y. Election Law § 3-108](#) provides that, in a multi-county election, the state board of elections may order an additional day of voting if less than 25% of registered voters in a municipality (or county within the City of New York) cast ballots due to an election emergency.

Such election postponements or extensions are [much more serious remedies](#) than modifications to, or suspensions of, other rules governing the electoral process. In the 2020 case [Republican National Committee v. Democratic National Committee](#), the U.S. Supreme Court has held that allowing people to cast votes after Election Day "fundamentally alters the nature of the election." This case confirms that federal courts may not order such extraordinary relief unless other changes to the election's rules would be insufficient to mitigate the impact of a disaster or crisis. In any event, given the extent of Helene's destruction, it is highly unlikely that conditions would be substantially different if voting were held a few days later.

As I have explained in greater detail elsewhere, the unique circumstances of a presidential election greatly limit a state's flexibility to either extend the period for returning absentee ballots or hold additional days of voting. After all votes are collected, they must be tallied and canvassed, generally at both the county and state levels. It is prudent to allow at least some time for recounts, election contests, or other post-election litigation. All of these post-election proceedings must be complete, and presidential electors appointed, by December 17, 2024, which is the date each state's electors must meet to cast their electoral votes. Congress set this date [in federal law](#), and the Constitution specifies all electors must meet in their respective states on the same day throughout the nation. If a state's electors cast their votes later due to an election emergency, potential constitutional questions may arise (though following the election of 1856, Congress chose to count Wisconsin's non-dispositive electoral votes for the losing candidate, even though they were cast late due to a blizzard). [Congress meets on January 6, 2025](#) to count electoral votes, and the new President is inaugurated on January 20. Thus, Presidential elections are subject to strict timing constraints under both the Constitution and federal law which greatly limit a state's flexibility to allow for extra voting after Election Day. Such extraordinary relief is generally appropriate only

when a major disaster strikes at the last minute, unexpectedly preventing voting on Election Day itself.

### Post-Election Challenges

It is also reasonably likely that election results in states impacted by Hurricane Helene will be challenged after the fact on the grounds that the hurricane disrupted the election and substantially reduced turnout. As Professor Rebecca Green catalogues in an [astute and insightful essay](#), courts have split over whether low turnout due to an unexpected disaster is grounds for an election challenge. Here, however, Hurricane Helene has already hit, and even its apparent successor, Hurricane Milton, is poised to strike Florida several weeks before Election Day. Should candidates, political parties, voters, or private nonprofit organizations believe changes to the election's rules are needed to help remediate the hurricanes' impact, the time for litigation is now—well in advance of Election Day.

The standard courts apply in assessing election-related Due Process claims depends on a case's timing. Prior to an election, a court will review an election's rules, requirements, and procedures under the flexible, subjective, *ad hoc* [Anderson-Burdick](#) standard. Under this test, the court begins by assessing the burden that the challenged restriction imposes on a person's ability to vote. The court must weigh this against the importance of the state interests that the challenged restriction promotes, as well as the extent to which the restriction advances those interests. In contrast, [once an election is over](#), a federal court will refuse to set aside its results on Due Process grounds unless the plaintiff can demonstrate that the proceeding was fundamentally unfair—a standard that proves difficult in practice to satisfy.

[Professor Hasen](#) urges courts to be flexible regarding ripeness requirements for election litigation precisely so that disputes may be resolved before votes are cast, apparent results are known, and the likely beneficiaries of each potential ruling are fairly certain. Even without any such special solicitude, however, as-applied challenges to an election's rules arising from a hurricane are squarely justiciable after the hurricane hits and its impact is known. Judicial challenges that are delayed until after the election has been held will almost certainly be rejected under the [equitable doctrine of laches](#). Broadly speaking, laches is an affirmative defense which allows courts to deny equitable relief after an election has been held based on claims or problems that could have been raised earlier. Due to laches, Helene's and Milton's inevitable impact on voter turnout in southeastern states is unlikely to be a valid basis for a post-election challenge.